RECENT CASES

APPEAL AND ERROR — DETERMINATION AND DISPOSITION OF CAUSE — DIVISION OF COURT. — On appeal from a conviction of murder in the second degree, two judges favored affirmance, and the other three held that the conviction should be set aside. Of these three, two held the refusal of one instruction erroneous, while the third joined with one of these two in holding a certain instruction bad, and was alone in thinking the refusal of another instruction error. Only two of the three, however, voted to remand the case for a new trial, for the other voted for a reduction of the degree of the offense to manslaughter. Hence on no one assignment of error was a majority of the court for reversal. *Held*, that the judgment be set aside and that the cause be remanded for new trial unless the state elect to stand on a conviction for manslaughter. *Price* v. *State*, 170 S. W. 235 (Ark.).

Where an appeal arises on a single assignment of error and a majority of the court is for reversal but for different reasons, it is properly held that there should be a reversal. *Browning* v. *State*, 33 Miss. 47, 87; *Oakley* v. *Aspinwall*, 1 Duer (N. Y.) 1. Even where the appeal is on several assignments of error and a majority upholds each assignment, but the minority on the separate assignments unite on the vote for reversal and become a majority, it has been held that there should be a reversal. *Smith* v. *United States*, 5 Pet. (U. S.) 292. See 22 HARV. L. REV. 533. This result seems to be required by logic, so long as the judges vote on the general question of reversal rather than separately on each specific assignment of error. It is obvious, however, as a matter of practice, that a new trial is futile when a majority of the appellate court has sustained the trial court on every point. On this ground, some courts have held, even apart from statute, that there should be no reversal. *In re McNaughton's Will*, 138 Wis. 179, 118 N. W. 997, 1001. See *Legal Tender Cases*, 52 Pa. 9, 101. Statutes requiring a separate vote on each assignment of error lead to this same result in other states. See MD., PUB. GEN. LAWS, Art. 5, §§ 4, 9; *cf. Matthews* v. *American Central Ins. Co.*, 154 N. Y. 449, 48 N. E. 751. In the principal case, therefore, unless the compromise reached was demanded by local practice, it would seem that an affirmance might have been justifiable.

BILLS AND NOTES — STATUTES — NEGOTIABLE INSTRUMENTS LAW: EFFECT ON STATUTE MAKING USURIOUS NOTES VOID. — A statute declared void all notes given for usurious consideration. Sections 55 and 57 of the uniform Negotiable Instruments Law, subsequently adopted, provide that the title of a person who negotiates an instrument is defective when obtained for an illegal consideration, but that a holder in due course holds the instrument free from such defects. The plaintiff was an innocent holder for value of a note given for usurious consideration. *Held*, that the plaintiff can recover. *Emanuel* v. *Misicki*, 149 N. Y. Supp. 905 (Sup. Ct.).

The principal case is additional authority to the effect that the Negotiable Instruments Law repeals by implication previous statutes making void instruments obtained in illegal transactions. *Wirt* v. *Stubblefield*, 17 App. D. C. 283; *Klar* v. *Kostiuk*, 65 N. Y. Misc. 199, 119 N. Y. Supp. 683. But there is much authority, including a late Iowa case, to the contrary, and this attitude seems much preferable, for the reason that a clear provision for repeal should be necessary to abrogate the previous statute. *Penny Savings Bank* v. *Fitzgerald*, 149 N. W. 497 (Ia.); *Alexander* v. *Hazelrigg*, 123 Ky. 677, 97 S. W. 353; *Crusins* v. *Siegman*, 81 N. Y. Misc. 367, 142 N. Y. Supp. 348; *Martin* v. *Hess*, 71 Leg. Intell. 148 (Phila. Munic. Ct.). Furthermore, it is difficult to see how